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June 29, 2007

Re: The Fairchild Corp. v. Alcoa, Inc.
CPR File No. G-06-22H

Dear Dan:

Your letter of June 28 is both surprising and disappointing. The Acquisition Agreement could not be clearer that any indemnification amounts must be netted against, among other things, the Tax Benefits realized by Alcoa in connection with the applicable Indemnifiable Losses. Is Alcoa suggesting that the Agreement does not mean what it says?

In any event, your citations to Judge Stapleton's Award do not bear on the issue.¹ Judge Stapleton made clear that the Award "addresses only those matters which are in evidence before the undersigned arbitrator." The Award does not purport to address the question of Tax Benefits realized by Alcoa on the various indemnification claims and no evidence was presented on the issue. This is no surprise given that the issue was not ripe prior to the issuance of the Award. One cannot assess the Tax Benefits applicable to a set of Indemnifiable Losses until one knows in the

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As previously noted, Fairchild is still reviewing the Award and expressly reserves all rights with respect to it. Your letter, however, highlights at least one aspect of the Award that is on its face erroneous. Specifically, the Award provides that "Alcoa is entitled to receive the amount of \$4,005,585.88 from the Escrow Account payable in full within thirty days of the date of this Award." Nowhere does the Agreement empower the arbitrator to order the Escrow Agent — whose conduct is governed by a separate agreement — to pay specific amounts out of the Escrow Account, nor does it authorize the setting of deadlines for that payment. Those matters are covered by the Escrow Agreement itself. Indeed, Section 11.7 of the Acquisition Agreement provides only that the Award will be binding "on the parties," not on the Escrow Agent.

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first instance what those Indemnifiable Losses are. Accordingly, the Award does **not** represent — nor could it represent — an adjudication on the issue of what Tax Benefits need to be netted against any owed indemnity.²

Nor was it previously apparent that the issue needed to be adjudicated at all. Indeed, until your letter, Fairchild was unaware that Alcoa had no intention of honoring Section 11.3(e) of the Acquisition Agreement.

Based on your letter, however, it appears that the parties now do have an unadjudicated dispute over the amount of indemnification owed by Fairchild to Alcoa — specifically, the amount of Tax Benefits that should be netted in accordance with Section 11.3(e). Accordingly, Fairchild has no choice but to invoke Section 11.7 of the Acquisition Agreement in an effort to resolve that dispute. That Section provides first for direct discussions between representatives of the parties. We are ready and able to engage in further discussions with Alcoa on this issue. Please advise when Alcoa would like to meet and/or confer. In order to make these discussions as productive as possible, I reiterate my request that Alcoa provide us with appropriate documentation regarding the relevant Tax Benefits and Alcoa's marginal tax rates for the entities that incurred the particular losses at issue.

If for some reason Alcoa is unwilling to engage in the discussions required under Section 11.7, then Fairchild intends to invoke the mediation provisions of Section 11.7.

All of Fairchild's rights with respect to these matters are, of course, expressly reserved.

Sincerely,


Adam Zurofsky

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Your letter is all the more disappointing given Alcoa's repeated arguments that an issue is not properly the subject of arbitration under Section 11.7 of the Acquisition Agreement unless and until that issue has been the subject of prior mediation. (*See e.g.*, Alcoa's Brief in Support of its Motion for Partial Summary Judgment at 54, n. 17). The parties have never mediated the question of the Tax Benefit offset under Section 11.3. Alcoa therefore cannot now claim — in contradiction to what it then argued — that the question of Tax Benefits under Section 11.3 was somehow legitimately addressed by the Award.

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VIA E-MAIL AND FEDERAL EXPRESS